

Testimony of
National Council For Adoption

U.S. House of Representatives
Committee on International Relations

Subcommittee on Africa, Global Human Rights
and International Operations

Hearing: “Status of the U.S. Implementation of
Hague Intercountry Adoptions”

November 14, 2006

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Chairman Smith and Members of the Subcommittee, my name is Thomas Atwood, president and chief executive officer of the National Council For Adoption. On behalf of the National Council For Adoption (NCFA), I thank the House Committee on International Relations' Subcommittee on Africa, Global Human Rights and International Operations for the opportunity to testify regarding the important topic of "Status of the U.S. Implementation of Hague Intercountry Adoptions." NCFA applauds the Subcommittee's interest in the compassionate practice of intercountry adoption, which over the last 35 years has found loving, permanent families in America for more than 350,000 orphans around the world.

The National Council For Adoption is an adoption research, education, and advocacy nonprofit whose mission is to promote the well-being of children, birthparents, and adoptive families by advocating for the positive option of adoption. Since its founding in 1980, NCFA has been a leader in serving the best interests of children through policies that promote a global culture of adoption and child welfare, increase intercountry adoptions with appropriate child protections, present adoption as a positive option for women with unplanned pregnancies, further adoption of children out of foster care, and make adoption more affordable through the adoption tax credit.

NCFA advocates the positive option of adoption, both domestic and intercountry, for children and families in America and around the world. NCFA has been involved in improving the intercountry adoption system since the early stages of drafting the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) and the Intercountry Adoption Act of 2000. In the past year, we have been to China, Vietnam, Russia, Guatemala, and The Hague, serving as a global advocate and expert on adoption and child welfare. In the coming year, we are planning trips to countries of origin in Africa, Asia, Eastern Europe, and Central and South America.

Making a Smooth Transition to the Hague Convention on Intercountry Adoption

The chief purpose of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) and of America's legislation to implement the Convention, the Intercountry Adoption Act of 2000 (IAA), is to establish a multilateral system that protects children while providing transparently and predictably for intercountry adoptions in their best interests. The Department of State's publishing of the long-awaited IAA implementing regulations this year is a milestone in the history of intercountry adoption in America.

The challenge of developing these regulations was daunting: to craft with public input a national regulatory plan that works with America's pre-existing private and state-

based adoption service system to manage the international transfer of parental rights and responsibilities through adoption. The regulations were developed during a long, arduous, public process that attempted to analyze and incorporate the expertise and perspectives of all players in the intercountry adoption system, including the addressing of 1,500 public comments. No doubt, the regulations will require some fine-tuning after we have experience working with them. But in NCFA's view, the resulting regulations are rigorous, comprehensive, and appear effective to achieve the purposes of the Act.

Now that we have reached this important milestone, the top international-adoption priority for the American government and adoption community should be to make a smooth transition to ratification and implementation of the Hague Convention and the IAA. While these regulations are sound and will promote child protection and international adoption, they are also complex and demanding. During the current transition, both the international adoption community in America and the Hague Convention Central Authorities around the world are relearning our ways of processing intercountry adoptions. Respectfully, now is not the time for another round of edits.

Nor is it the appropriate time to consider another major intercountry adoption reform, in addition to the Hague-Convention transition, as contemplated by H.R. 5726, the Intercountry Adoption Reform Act of 2006. Further reforms may be appropriate once we have experience with the new Hague-IAA regulations. But there is no compelling reason to implement other major reforms at this time, such as transferring to the State Department all of DHS's work currently housed in Citizenship and Immigration Services, as H.R. 5726 proposes. As the Hague-IAA regulations are implemented, the need for additional reforms may become evident, and such reforms, along with H.R. 5726, could be more cogently considered at that time. But forcing such another major bureaucratic transition at this already demanding time would disrupt intercountry adoptions and confuse our Central Authority partners around the world.

Consider some of the new systems and challenges in the State Department's 100-page public notice of the final rule that are being learned and managed during this transition, in order to process adoptions with Hague Convention Member States: the establishment of the new Central Authority in the Department of State; the authorizing and contracting of new accrediting entities; the accreditation of adoption agencies and approval of persons, who may make adoption placements under the Hague Convention; the adaptation of all adoption service providers to the rule's new standards and requirements; a new six-part definition of adoption services and new rules regarding four newly defined categories that may provide them; the establishment of a case registry at State and the Department of Homeland Security for incoming and outgoing adoptions, both for Hague Convention and non-Convention intercountry adoptions; new data collection, record-keeping, and reporting requirements; and much more.

The pivotal moment of implementation of the Hague Convention on Intercountry Adoption and the Intercountry Adoption Act is here. The National Council For Adoption believes that it serves the best interests of children in need of adoption to make our top

priority at this time a smooth transition to the Hague-IAA system, which so many people and agencies, both public and private, have worked so hard and long to make possible.

Accreditation and Standards, the Cornerstones of the Hague-IAA System

To protect children and provide adoptions in their best interests, the intercountry adoption regulatory system should ensure the legitimacy of birthparent consents, the legality of the child's orphan status, the suitability of parents to adopt, their preparation to adopt, the availability of post-adoption services for adoptive families, the prevention of corruption and of the influence of financial incentives, and the professionalism and integrity of adoption service providers. The main Hague-IAA strategy for achieving these goals is the accreditation of adoption service providers in accordance with social service and business management standards. The Hague-IAA implementing regulations establish clear, rigorous standards for adoption service providers in such areas as: professional qualifications and training; home studies and preparation of prospective adoptive parents; quality controls and complaint procedures; service delivery and case tracking; ethics and fee practices; post-placement monitoring and services; and record-keeping and financial management.

Accreditation has advantages that advance the purposes of the Hague Convention and IAA. Accreditation improves adoption service providers' accountability and performance by enabling the Central Authority through accrediting entities to require agencies to adhere to certain performance standards in order to maintain their accreditation and be allowed to continue providing services. Working with accredited adoption agencies ensures that professional social workers are involved in the adoption process. The employment of trained and certified social workers means that: prospective parents will be more thoroughly screened; parents will be better prepared for the additional challenges they may face with a child who has been institutionalized; children and families will be provided better post-placement support to address any problems that may arise; and adoption will proceed as a social service in the best interests of children, not as an economic transaction. Accreditation improves the quality and integrity of services by requiring adherence to professional social service standards.

Specific Hague-IAA Policies and Procedures that Promote Sound Ethical Adoptions

Some of the features of the Hague-IAA implementing regulations that will contribute to an effective intercountry adoption regulatory system are:

Authorization of the Department of State as Central Authority: The complexity of collaborating with other nations to process intercountry adoption is well served by a mostly uniform and centralized, national approach. The Hague-IAA implementing regulations achieve that with Hague Convention Member States while building upon, not displacing, America's excellent state-based and private adoption service resources.

Delegation of accrediting responsibility to accrediting entities: By delegating the accrediting responsibility to private and state accrediting entities, the regulations

strengthen accountability in the system. If an accrediting entity does not do its job, the Central Authority can impose consequences and corrective actions. It would be more difficult to exercise accountability over a government office that failed to perform the accreditation function adequately.

Specification of “primary provider”: By indicating the “primary provider” in every adoption case and defining that provider’s responsibilities, the Hague-IAA implementing regulations appropriately make plain who is primarily accountable for management of the adoption process. The Central Authority and parties to adoption have a clear place to turn for action and accountability in any given case.

Definition of adoption services: By defining the six adoption services, the regulations further clarify the roles and responsibilities of adoption service providers. Agencies and persons that provide any one of six adoption services must be accredited, temporarily accredited, approved, or supervised. The six adoption services are: identifying a child for adoption and arranging an adoption; securing consent to termination of parental rights and to adoption; performing a home study and report on prospective adoptive parent(s) or a background study and report on a child; making a non-judicial determination of a child's best interests and of the appropriateness of an adoptive placement; monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; and assuming custody of a child and providing childcare or any other social service when necessary because of a disruption pending alternative placement.

Liability insurance requirement: The regulations require adoption service providers to carry a minimum \$1-million in liability insurance, thus providing recourse for adoptive parents in cases of fraud, negligence, or malfeasance. The regulations do not require a primary provider to assume legal responsibility for tort, contract, and other civil claims against supervised providers or to carry liability insurance for its supervised providers. However, in order to attain and maintain accreditation, the regulations require standards for supervision of supervised providers. Moreover, the regulations do not prevent adoptive or prospective-adoptive parents from bringing a claim under state law for an alleged tort or breach of contract. Supervised and supervising providers will enter into contracts about liability coverage and indemnifications that would govern responsibility for damages in such cases.

Fee itemization requirement: The Hague-IAA regulations require adoption service providers to present itemized fee schedules to prospective adoptive parents at the beginning of the process. Examples of costs and fees that must be itemized include: the home study; “adoption expenses in the U.S.,” such as personnel, overhead, publications and communications, and training and education; foreign country program expenses; care of the child in the country of origin; humanitarian aid and other contributions; post-placement reports; third-party fees, such as Central Authority processing fees; and travel and accommodations. Providers must provide parents a written description of the fee refund process and receipts for fees and expenses paid in the country of origin. The regulations also require parental written consent for un-itemized fees in excess of \$1,000.

Complaint procedures: The regulations require providers to establish a written complaint process, which must be given to parents at the beginning of service delivery. Parents must first follow this procedure regarding any complaint, but the providers are required to respond to parents' complaints within 30 days. If the provider does not satisfactorily respond within that timeframe, parents may take their complaint to the accrediting entity's Complaint Registry. The accrediting entity may take adverse action against the provider if the complaint is not satisfactorily resolved. Providers whose accreditation is lost or suspended may seek judicial review in certain circumstances. These new complaint procedures significantly improve parental protections, while still protecting agencies from frivolous and false complaints.

Standards to promote sound business practices: The regulations impose business-practice standards to ensure the financial soundness of adoption service providers, thus reducing the possibility of providers going out of practice in the midst of adoptions.

Parent education and training: The Hague-IAA implementing regulations require that adoption service providers give adopting parents ten hours of education and training regarding the intercountry adoption process; the types of challenges that children who have been institutionalized can present and how to address them; and specific details about their child. This requirement will help parents be realistic and prepared, in order to make a smoother transition when the child comes home. (NCFA will soon offer an online parent training program for the non-child-specific components of this education requirement, entitled, "The Intercountry Adoption Journey: Hague-Compliant Parent Training from NCFA." For further information, visit www.HagueAdoption.org.)

Parental and agency compliance with the laws of countries of origin: The regulations authorize the Central Authority to require parental and agency compliance with the laws of the country of origin. This authorization may be helpful in producing more consistent compliance with the post-placement reporting requirements of countries such as Russia and Ukraine. Inconsistency in that reporting has led to moratoria and threats of moratoria in those countries.

Issues to Watch as Implementation Moves Forward

At this time, NCFA recommends prompt implementation of these regulations and prompt ratification and entry into force of the Hague Convention. That said, we can expect to discover some needs for fine-tuning as we move forward. Following are some areas to watch as we implement the new system:

Approved persons as primary providers: One significant unknown under the new regulations is the role of the "approved person" as primary provider. The equivalent of the primary provider in the current system in the U.S. is almost always a licensed adoption agency. Currently, very few intercountry adoption cases utilize attorneys in an equivalent position to primary provider. The Hague-IAA regulations impose significantly more regulations on adoption attorneys than they are accustomed to following in domestic adoption cases. Will many attorneys and for-profit entities seek approved

person status and serve as primary providers? Will their service as primary providers be as adequate in the provision of professional social services as accredited agencies? These are questions we should follow as we move forward.

Affordable liability insurance availability: Covering liability concerns in the new system requires a significant expansion of the affordable liability insurance marketplace for agencies. Most likely, that expansion will occur, but it should be monitored and encouraged. Pro-active discussions may be required between the Central Authority, adoption agencies, and insurance companies.

Liability for foreign supervised providers: In the area of liability for foreign supervised providers, the regulations strike a seemingly fair and practical balance between the respective rights and responsibilities of adoptive parents and primary providers. But the proof will be in the execution. This issue should be monitored.

Enforcement of compliance with other government's laws: The full meaning of the Central Authority's authorization to require compliance with other government's laws may not yet be fully understood. Does the idea of the American government enforcing another country's laws raise a constitutional issue? From the perspective of children's interests in intercountry adoption, it would seem to be beneficial if the American system could more reliably meet reasonable requirements that some countries of origin make regarding post-placement reporting, for example.

Level of bureaucracy and regulation: The Hague-IAA regulations are certainly comprehensive and detailed – some have argued that they are too much so. In NCFA's view, they appear to be appropriately rigorous and detailed to achieve the Convention's and IAA's purpose of ensuring intercountry adoptions in children's best interests, while providing child protections. Here, too, the proof will be in the execution and the issue should be closely monitored.

Working with Other Hague Countries

America's imminent ratification of the Hague Convention presents opportunities for expanding intercountry adoption. Several Hague Member States, such as Mexico, India, and Brazil, have indicated that they would be interested in processing more adoptions by Americans when the U.S. ratifies the Convention. American intercountry adoption officials and advocates should restart their adoption and child welfare advocacy now with countries such as these. Other countries such as Russia, Ukraine, and Vietnam, are more likely to ratify the Convention once America has done so. Within several years of America's ratification, almost all countries with significant intercountry adoption programs are likely to be Hague Member States. This outcome will advance a global culture of adoption and child welfare and be beneficial to children and families around the world. In the coming decade, the continent of Africa will hopefully become more receptive to adoption advocacy, too.

Hague Member State Guatemala is a concern. If Guatemala does not come into compliance with the Convention by the time America ratifies, intercountry adoptions from this the third-ranked country (nearly 3,800 adoptions of Guatemalan children by Americans in 2005) to America may end. American intercountry adoption officials and advocates are working hard to promote dialog between the Guatemalan factions to produce reforms that will bring the country into compliance.

Holistic Approach to International Advocacy of Adoption and Child Welfare

The basic tenet of intercountry adoption is that national boundaries and national pride should not prevent children from having families. This truth seems self-evident. Given the choice between growing up with a loving, permanent family of one's own through international adoption, versus growing up without a family in the country in which one happens to have been born, most people would choose a family through intercountry adoption.

To varying degrees, intercountry adoption encounters a streak of nationalism in every country of origin. To some extent, this nationalistic reaction is understandable: Any self-respecting nation would like to be able to take care of its children in need itself. Intercountry adoption advocacy should be careful not to feed into this nationalistic reaction. NCFA recommends a holistic approach, which respects intercountry adoption as part of the country of origin's overall adoption and child welfare program. This approach presents intercountry adoption as a positive option for orphans, second in preference to timely domestic adoption, but to be preferred over domestic foster care and group or institutional care. However, when domestic adoption is not occurring for children within a certain timeframe, orphans should become eligible for intercountry adoption.

As they implement the Hague Convention, many countries are taking holistic looks at their adoption and child welfare programs. Thus, because of our country's many decades of experience with these policies, America's opportunities here go beyond promoting our own citizens' ability to adopt internationally. By sponsoring educational seminars and exchanges with other Hague Central Authorities, for example, we can promote and inform the global proliferation of adoption and child welfare policies.

In conclusion, Chairman Smith and Members of the Subcommittee, the National Council For Adoption greatly appreciates this Subcommittee's advocacy of intercountry adoption and oversight of the transition to the emerging Hague-IAA system for intercountry adoption. We offer our continued assistance in advancing this crucial mission. Thank you very much.

Respectfully submitted,

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